

ORIGINAL

INTERVENTION



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AZ CORP COMMISSION
DOCKET CONTROL

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

DOUG LITTLE, Acting Chairman
BOB BURNS
TOM FORESE
BOB STUMP

Arizona Corporation Commission

DOCKETED

FEB 01 2016

DOCKETED BY

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In the matter of

KENNETH JOSEPH PLEIN, a married
man,

DOCKET NO. S-20774A-10-0494

MARY KATHRYN PLEIN (a.k.a. "MARY
KAY PLEIN"), a married woman,

**EMERGENCY APPLICATION FOR
LEAVE TO INTERVENE, MOTION
TO REOPEN DOCKET, AND
MOTION OBJECTING TO
PROPOSED MANNER OF
DISTRIBUTION OF VICTIMS'
RESTITUTION FUNDS**

KENNETH JOSEPH PLEIN and MARY
KATHRYN PLEIN (a.k.a. "MARY KAY
PLEIN"), Co-Trustees of THE PLEIN
FAMILY TRUST U/T/A dated
DECEMBER 1, 1993,

PLEIN ENTERPRISES INCORPORATED
(d.b.a. "TRI-STAR REALTY"), an Arizona
corporation,

Respondents.

1 Pursuant to AAC R14-3-105, Patricia Peterson (through her personal
2 representative M. Christopher Peterson), who is a named victim in this case with a
3 direct and substantial interest, by and through counsel undersigned, hereby submits this
4 Application to Intervene in this matter. Further, pursuant to AAC R14-3-106(K), Ms.
5 Peterson hereby submits this Motion to Reopen Docket and Motion Objecting to
6 Proposed Manner of Distribution of Victims' Restitution Funds. Ms. Peterson's
7 interest in the matter, and reasons for intervention, is as follows:
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11 1. This firm represents M. Christopher Peterson acting as the personal
12 representative of the estate of Patricia Peterson in Maricopa County Superior Court
13 case No. CR2012-009415. Ms. Peterson was one of the victims of the Pleins as
14 indicated in the records of the Arizona Corporation Commission ("ACC") in Docket
15 No. S-20774A-10-0494, Decision # 72238 ("Plein Order").
16
17

18 2. Mr. Peterson files this emergency Application, as on January 25, 2016, he
19 learned that in the name of the ACC, \$1 million recently recovered to pay restitution to
20 the Plein victims was planned to be diverted to the ACC in apparent violation of the
21 Plein Order, with 35% to be designated as "attorneys' fees." The Superior Court has
22 set another hearing for February 2, 2016 on this proposal; thus the emergency motion
23 pursuant to R14-3-106(K).
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27 3. The Plein Order (attached as Exhibit 1) found that the Pleins have engaged in
28 securities law violations and ordered restitution to the Plein victims of over \$19

1 million, and established an administrative penalty of \$250,000 pursuant to A.R.S. § 44-
2 2036. Exh. 1 at 12 – 13. The Plein Order specified that the victims were to receive
3 full restitution before the administrative penalty was to be paid. Exh. 1 at 13. The
4 Order did not award costs and attorney fees to the Commission. The Plein Order states
5 that most victims were from the Sun City area; in other words, the Pleins preyed on the
6 elderly.
7

8
9 4. Kenneth J. Plein was prosecuted in CR2012-009415 (“Plein criminal case”).
10 Recently, \$4 million has been recovered which can be used for restitution to victims.
11 Disposition of that money is being discussed in the Plein criminal case. A status
12 conference was held on January 25, 2016 at which the trial Court tentatively
13 announced that a victim restitution scheme was being contemplated to distribute \$4
14 million of Plein’s insurance proceeds that were obtained through the California probate
15 court. Under the scheme (apparently suggested off the record by the lawyers in the
16 case – prosecutor, ACC lawyer, and defense lawyer) as explained by the Court at the
17 status conference, \$3 million of the insurance proceeds would be directed to the
18 Maricopa County Clerk of Court for distribution to the victims of the Plein scheme.
19 The remaining \$1 million would be held in an Arizona Corporation Commission
20 account, from which the Arizona Corporation Commission intended to withdraw 35%
21 for their own purposes.
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1 5. The Victim voiced his tentative objection to such a proposal, as he had never
2 seen or heard mention in any of the Plein case hearings he had attended, nor any of the
3 pleadings or minute entries he had reviewed, that the Corporation Commission had
4 requested 35% of anything.
5

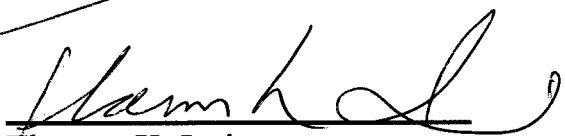
6 6. Another status conference is being held in the criminal matter on February 2,
7 2016. The Victim will appear pursuant to the Victims' Bill of Rights and other statutes
8 to object to any monies being withheld from the victims.
9
10

11 7. Initial examination of the record provides no basis for the ACC to divert any
12 money from the victims of the Plein fraud. Such an act would appear to violate the
13 Plein Order. The Victim requests that the ACC provide any rationale or authority for
14 such a diversion.
15
16

17 8. The Victim hereby moves for an Emergency Order of the ACC affirming it has
18 no entitlement to any portion of the \$4 million restitution funds, which should be
19 distributed to victims of the Pleins, that the 35% statute does not apply and that its
20 Plein Order governs any entitlement it has to any monies recovered in the Plein matter.
21

22 **RESPECTFULLY SUBMITTED** this 1st day of February, 2016.
23

24 ASU Alumni Law Group

25 
26

27 Thomas K. Irvine
28 Two North Central, Suite 1600
Phoenix, Arizona 85004
Attorneys for Victim

1 ORIGINAL and thirteen (13) copies
2 filed this 1st day of February, 2016, with:

3 Docket Control
4 Arizona Corporation Commission
5 1200 West Washington Street
6 Phoenix, Arizona 85007

7 **COPIES** of the foregoing mailed and emailed
8 this 1st day of February, 2016, to:

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27
28
By: 

BEFORE THE ARIZONA CORPORATION COMMISSION
Arizona Corporation Commission

DOCKETED

MAR 21 2011

COMMISSIONERS

GARY PIERCE, Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

DOCKETED BY

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In the matter of

DOCKET NO. S-20774A-10-0494

KENNETH JOSEPH PLEIN, a married
man,

DECISION NO. 72238

MARY KATHRYN PLEIN (a.k.a. "MARY
KAY PLEIN"), a married woman,

**ORDER TO CEASE AND DESIST, ORDER
FOR RESTITUTION, ORDER FOR
ADMINISTRATIVE PENALTIES AND
CONSENT TO SAME BY:**

KENNETH JOSEPH PLEIN and MARY
KATHRYN PLEIN (a.k.a. "MARY KAY
PLEIN"), Co-Trustees of THE PLEIN
FAMILY TRUST U/T/A dated
DECEMBER 1, 1993,

RESPONDENT KENNETH JOSEPH PLEIN

RESPONDENT MARY KATHRYN PLEIN

PLEIN ENTERPRISES INCORPORATED
(d.b.a. "TRI-STAR REALTY"), an Arizona
corporation,

**RESPONDENTS KENNETH JOSEPH PLEIN
and MARY KATHRYN PLEIN, Co-Trustees of
THE PLEIN FAMILY TRUST U/T/A dated
DECEMBER 1, 1993**

Respondents.

**RESPONDENT PLEIN ENTERPRISES
INCORPORATED**

Respondents KENNETH JOSEPH PLEIN, MARY KATHRYN PLEIN (a.k.a. "MARY KAY PLEIN"), KENNETH JOSEPH PLEIN and MARY KATHRYN PLEIN (a.k.a. "MARY KAY PLEIN"), Co-Trustees of THE PLEIN FAMILY TRUST U/T/A dated DECEMBER 1, 1993, and PLEIN ENTERPRISES INCORPORATED (d.b.a. "TRI-STAR REALTY") ("Respondents"), elect to permanently waive any right to a hearing and appeal under Articles 11 and 12 of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act") with respect to this Order To Cease And Desist, Order For Restitution, Order for Administrative Penalties ("Order"), and Respondents' Consent To Entry Of Order. Respondents admit the jurisdiction of the Arizona Corporation Commission ("Commission"); admit only for purposes of this proceeding, and any other

1 administrative or civil proceeding to which the Commission or its authorized agent is a party; and
2 consent to the entry of this Order by the Commission.

3 I.

4 FINDINGS OF FACT

5 1. At all times relevant, Respondent KENNETH JOSEPH PLEIN ("KP") has been a
6 married man and an Arizona resident. At all times relevant, KP issued, offered and sold the
7 investments discussed below within and from Arizona in his individual capacity, and on behalf of
8 Respondents: (a) THE PLEIN FAMILY TRUST U/T/A dated DECEMBER 1, 1993 (the
9 "TRUST") as its Co-Trustee and investment salesman; and (b) PLEIN ENTERPRISES
10 INCORPORATED (d.b.a. "TRI-STAR REALTY") ("PE") as its co-owner, president, director and
11 investment salesman. In these capacities, KP promoted, controlled and bore responsibility for PE's
12 business and financial affairs, and its investor solicitation activities. At all times relevant, KP was a
13 real estate broker licensed by the Arizona Department of Real Estate ("Arizona DRE"),
14 #BR006126000 (the "License"). On or about October 1, 2010, KP's License was cancelled by the
15 Arizona DRE. KP has not been registered by the Commission as a securities salesman or dealer.

16 2. At all times relevant, Respondent MARY KATHRYN PLEIN (a.k.a. "MARY KAY
17 PLEIN") ("MP") has been a married woman and an Arizona resident. At all times relevant, MP
18 issued, offered and sold the investments discussed below within and from Arizona in her individual
19 capacity, and on behalf of: (a) the TRUST as its Co-Trustee and/or investment salesman; and (b)
20 PE as its co-owner, secretary, treasurer, director and/or investment salesman. In these capacities,
21 MP promoted, controlled and bore responsibility for PE's business and financial affairs, and its
22 investor solicitation activities. MP has not been registered by the Commission as a securities
23 salesman or dealer.

24 3. The TRUST was formed by KP and MP under Arizona law on or about December 1,
25 1993. At all times relevant, the Trust issued the investments discussed below within and from
26 Arizona. The TRUST has not been registered by the Commission as a securities dealer.

1 4. PE was formed as an Arizona corporation by KP and MP on May 7, 1985.¹ At all
2 times relevant, PE maintained its principal place of business in Sun City, Arizona, and it issued the
3 investments discussed below within or from Arizona. PE has not been registered by the Commission
4 as a securities dealer.

5 5. KP, MP, the TRUST and PE may be referred to as "Respondent(s)."

6 6. At all times relevant, KP and MP were married to each other, and were acting for
7 their own benefit and the benefit or in furtherance of their marital community.

8 A. Respondents' Real Estate Business

9 7. At all times relevant, Respondents represented to offerees and investors, both
10 verbally and in writing, that Respondents are in the business of buying, leasing, remodeling, and
11 reselling residential and commercial real estate and vacant land located in the greater Sun City,
12 Arizona area (the "Real Estate").

13 8. From approximately May 1985 to June 2010, Respondents issued, offered and sold
14 investments to the general public to raise capital to fund and operate Respondents' Real Estate
15 business (the "Investment(s)"). The Investments have not been registered as securities with the
16 Commission to be offered or sold within or from Arizona.

17 9. Respondents solicited offerees and investors, in part, by publishing and distributing
18 detailed one- or two-page letters drafted on PE letterhead that described the benefits of purchasing
19 the Investments, current Investment opportunities, and the positive opportunities available to
20 Respondents in the Real Estate market (the "Prospectus(es)").

21 10. A Prospectus dated September 22, 2008, drafted by KP and addressed to existing or
22 potential "Private Investors," states, in part, as follows:

23 Our private investor family has grown to 110 couples or individuals with
24 investments on [sic] over 200 properties, including rental homes, condos, duplexes,
land, office buildings, shopping center [sic], and rehab/fix-up properties.

25
26 ¹ At all times relevant, PE was licensed by the Arizona DRE as a "Real Estate Corporation,"
#CO001185000, with KP serving as its "Designated Broker." PE's license has been cancelled by the
Arizona DRE.

1 There are 55 Sun City foreclosures now on the market. This is the time for us to be
2 acquiring properties to fix up and re-sell or hold and rent until the market returns to
3 normal. Buying prices have never been lower and there are excellent buys
4 available...

4 We are looking for additional investment capital to expand our real estate programs.
5 We are willing to pay [investors] 9% interest on all new loans [*i.e.*, Investments].

6 11. KP represented to offerees and investors that the Investments were often superior to
7 other types of investments such as bank certificates of deposit and company stock. For instance, as
8 explained in a Prospectus dated February 17, 2009, provided by KP to existing or potential "Private
9 Investors:"

10 We are in the greatest buying time of the greater Sun City area due to the bank
11 lender foreclosures.

12 We acquired seven properties (four in Sun City and three in Youngtown) the past
13 two months. We have already remodeled those homes and re-sold four of them. If
14 they do not sell quickly we're holding those homes as re-modeled rentals.

15 We are using nice Travertine flooring, granite countertops, stainless steel appliances
16 and new modern amenities so the renovated homes sell very quickly.

17 We need your help. We are looking for additional investment capital.

18 We are willing to pay [investors] 9% interest on all new loans [*i.e.*, Investments].
19 If you are only getting 1% or 2% in the bank, or seeing your stocks, mutual funds,
20 bonds and annuities dropping in value, please call us to invest your funds.

21 **B. Investment Terms and Documentation**

22 12. KP represented to offerees and investors both verbally and in writing that the
23 Investments would provide them with passive profits equaling seven to ten percent of their
24 principal Investments per year, with interest paid out on a monthly basis and the eventual return of
25 their principal at the conclusion of the Investments.

26 13. The Investments included stated terms ranging from approximately one to seven
years. Respondents most often issued and sold Investments with five-year terms. At the
conclusion of expired Investments, KP sometimes persuaded investors to accept new Investments

1 that incorporated investors' original principal Investments and/or accrued or paper profits (the
2 "Roll-Over" investments).

3 14. The Investments were purchased for varying amounts ranging from, without
4 limitation, \$10,000 up to \$180,000.

5 15. The Investments were primarily documented by promissory notes (the "Note(s)")
6 made and executed by: (a) KP in his individual capacity; (b) both KP and MP in their individual
7 capacities; (c) both KP and MP on behalf of the Trust as its Co-Trustees; and (d) by KP and/or MP
8 on behalf of PE as its owners, officers and directors.

9 16. At all times relevant, KP represented to offerees and investors that the Notes would
10 be adequately "secured" by a lien on the Real Estate purchased by Respondents with investors'
11 money. To perfect these lien interests in favor of investors, KP further represented to offerees and
12 investors that Respondents would draft and execute deeds of trust and assignments of rent
13 ("DOT(s)") to be recorded in the county where the related Real Estate was located.

14 17. Like the Notes, the DOTs were signed by KP and MP in their individual capacities
15 and on behalf of the Trust as its Co-Trustees, and on behalf of PE as its owners, officers and
16 directors.

17 **C. Respondents' Misrepresentations and Omissions**

18 18. KP represented to offerees and investors that the DOTs would create first position
19 liens, and the only lien interests in favor of investors on the Real Estate purchased with their
20 Investment money.

21 19. KP further represented to offerees and investors that the Investments were safe
22 because the fair market value of the secured Real Estate would exceed investors' principal
23 Investments by twenty-five to twenty percent, resulting in a loan Investment to value ratio of
24 seventy-five to eighty percent.

1 20. Thus, in the event of Respondents' default on their Investment obligations, investors
2 were led to believe that they would be able to recoup all or a vast portion of their principal
3 Investment funds by foreclosing on their Real Estate collateral.

4 21. KP failed to disclose to offerees and investors that KP would often fail to record any
5 DOTs on behalf of Investment investors.² Respondents' failure to timely perfect investors' lien
6 interests in the Real Estate purchased with investors' money by recording the DOTs often resulted
7 in the investors' Investments being unsecured.

8 22. Also unbeknownst to offerees and investors, Respondents sometimes prepared and
9 recorded multiple DOTs relating to a single piece of Real Estate in favor of multiple investors,
10 thereby effectively creating first, second, third and even fourth position lien interests. This
11 practice, coupled with the recent decline in the Real Estate market, resulted in investors'
12 Investments being under-secured and/or effectively unsecured.

13 23. Also unbeknownst to offerees and investors, Respondents sometimes encumbered
14 Real Estate collateral that had purportedly been assigned as security for an investor's Investment
15 by: (a) borrowing money from a bank or hard money lender; and (b) authorizing the bank or lender
16 to record a first position DOT against the Real Estate (the "Commercial Loan Liens"). These
17 Commercial Loan Liens similarly resulted in the investors' Investments being under-secured and/or
18 effectively unsecured.

19 **D. Investment Offering Summary**

20 24. Respondents often issued and sold two or more Investments to a single investor.
21 Based on the foregoing, Respondents issued and sold at least three hundred and forty six (346)
22 separate Investments (*i.e.*, original, additional and Roll-Over investments) totaling approximately
23
24

25 ² In Arizona, the transfer or creation of a legal interest in real property by and between a buyer, seller and/or
26 lender is generally not effective as against others unless the document creating or transferring the legal
interest is "recorded as provided by law in the office of the county recorder of the county in which the
property is located." *See, e.g.*, A.R.S. § 33-411(A).

1 \$19,851,868 to ninety eight (98) investors residing throughout Arizona and seventeen (17) other
2 states.

3 25. Of this amount, approximately: (a) seventy-three of the Investments totaling
4 \$4,199,432 were issued and sold by KP and/or MP in their individual capacities; (b) two hundred
5 and fifty Investments totaling \$14,316,254 were issued and/or sold by the Trust; and (c) twenty-
6 three of the Investments totaling \$1,336,182 were issued and/or sold by PE.

7 26. Respondents' Real Estate business failed, in part, because the value of the Real
8 Estate collateral has plummeted. Respondents have defaulted on the majority of their Investment
9 obligations. Respondents ceased making any Investment payments to investors in or about July
10 2010.

11 27. Many of Respondents' investors are retired or senior citizens who cashed out all or a
12 substantial portion of their pre-existing retirement-based investments and/or life savings to
13 purchase their Investments.

14 28. KP and MP voluntarily filed a Chapter 7 bankruptcy petition in the U.S. Bankruptcy
15 Court, District of Arizona on August 6, 2010 (*See*, Case No. 2:10-bk-24921-CGC).

16 29. KP and MP also caused PE to voluntarily file a Chapter 7 bankruptcy petition in the
17 U.S. Bankruptcy Court, District of Arizona on August 6, 2010 (*See*, Case No. 2:10-bk-24919-RJH).

18 30. The pending bankruptcies were consolidated on August 30, 2010, and are now being
19 jointly administered under the main Case No. 2:10-bk-24921-RJH (the "Bankruptcy(cies)").
20 Respondents' Bankruptcy schedules indicate that their liabilities exceed their assets by millions of
21 dollars.

22 31. Many of Respondents' investors are identified in and/or participating in the
23 Bankruptcies at great and/or additional expense to said investors. As a result of the Bankruptcies,
24 the majority of Respondents' investors only recently received information in the fall of 2010
25 indicating that their Investments are under-secured and/or effectively unsecured for the reasons set
26 forth above.

1 **E. General Investment Allegations**

2 32. Investors provided their Investment money directly to Respondents, who then
3 deposited and commingled Investment funds in common Arizona bank accounts owned and
4 controlled by Respondents (the "Arizona Bank Account(s)") including, without limitation, one
5 repeatedly referred to by Respondents as the "Green Builder Account."

6 33. Respondents caused to be deposited into, or disbursed from the Arizona Bank
7 Accounts, all monies related to Respondents' Real Estate business operations including, without
8 limitation: (a) tenant rent payments; (b) Investment returns (principal and interest); (c) Real Estate
9 construction and development payments; and (d) even the personal funds of KP and MP.

10 34. Respondents prepared and maintained material records of the Investments, although
11 not all of this information was provided to investors. Rather, after investors purchased an
12 Investment, Respondents would send to the investors a letter regarding their "Real Estate
13 Investment" that included their Note, a copy of their often unrecorded DOT, a copy of their
14 investment check, and a receipt acknowledging the investors' Investment purchase.

15 35. Respondents and/or their authorized agents managed the essential elements of the
16 Investments and, without limitation: (a) selected, inspected and evaluated potential Real Estate
17 acquisitions; (b) negotiated the terms and conditions of Real Estate purchases; (c) arranged for and
18 participated in Real Estate escrow closings including, for example, the procurement of title reports
19 and insurance policies; (d) raised capital from Investors, banks and/or hard money lenders to
20 purchase and/or renovate Real Estate; (e) planned and managed the renovation of the Real Estate;
21 (f) calculated the appropriate sales prices or rental rates for Real Estate, in part, by analyzing
22 comparable properties; (g) advertised and marketed the Real Estate to potential buyers and renters;
23 (h) negotiated and executed tenant lease agreements and residential and commercial purchase
24 contracts; and (i) collected Real Estate rent and purchase money, and distributed such funds to
25 investors and/or hard money lenders.

26

36. Respondents' investors generally had no direct contact with Real Estate purchasers or renters. Instead, investors specifically agreed, and/or intended that Respondents would communicate with Real Estate purchasers or renters on their behalf.

37. Respondents profited from the Investments, without limitation, by retaining the difference between: (a) the ultimate resale price of a particular piece of Real Estate, minus expenses and the amounts owed to related investors and lenders; and/or (b) monthly rent payment made by the tenants of a particular piece of Real Estate, minus expenses and amounts owed to related investors and lenders.

38. At all times relevant, KP emphasized to offerees and investors that Respondents' ability to repay investors their promised profits would depend on his superior Real Estate knowledge and skill in purchasing, renovating, leasing and reselling the Real Estate purchased with investor money, and his approximately thirty years of Real Estate experience. Investors contacted by the Securities Division of the Commission have further stated that they purchased their Investments based on their belief that Respondents were successful Real Estate professionals who have sold a large number of Real Estate properties for many years.

39. As discussed above, Respondents' ability to repay Investment investors, and the investors' risk of loss of their Investments, was interwoven with and dependent on: (a) Respondents' ability, effort and success in profitably reselling and/or renting the Real Estate serving as collateral for the Investments; (b) Respondents' management of the Investments including, without limitation, their timely recordation of the DOTs as promised; and (c) Respondents' continued viability as successful and profitable Real Estate professionals.

II.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

1 2. Respondents offered or sold securities within or from Arizona, within the meaning
2 of A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

3 3. Respondents violated A.R.S. § 44-1841 by offering or selling securities that were
4 neither registered nor exempt from registration.

5 4. Respondents violated A.R.S. § 44-1842 by offering or selling securities while
6 neither registered as dealers or salesmen nor exempt from registration.

7 5. Respondents violated A.R.S. § 44-1991 by:

8 a. Representing to offerees and investors that the Investments would be adequately
9 secured by the Real Estate purchased with their Investment money, while further
10 failing to disclose to them that their Investments would be unsecured because
11 Respondents would fail to record DOTs in favor of investors;

12 b. Representing to offerees and investors that the Investments would be adequately
13 secured by the Real Estate purchased with their Investment money, while further
14 failing to disclose to them that: (1) Respondents would often file multiple DOTs in
15 favor of multiple investors to create multiple lien interests in a single piece of Real
16 Estate, resulting in the investors receiving second, third and fourth position lien
17 interests in their purported Real Estate collateral; and (2) that, as a result, their
18 Investments would be under-secured and/or effectively unsecured;

19 c. Representing to offerees and investors that the Investments were safe, in part,
20 because the fair market value of the Real Estate purchased with their Investment
21 money exceeded the related principal Investments by twenty-five to twenty percent,
22 while further failing to disclose to them that Respondents would often cause
23 multiple DOTs to be filed with respect to a single piece of Real Estate and, as a
24 result, the value of their purported Real Estate collateral would be greatly exceeded
25 by the value of the attached, often multiple investor lien interests; and,
26

d. Representing to offerees and investors that the Investments would be adequately secured by a first position DOT that would represent the only lien interest in the Real Estate purchased with investor money, while further failing to disclose to them that Respondents would often cause multiple DOTs to be filed with respect to a single piece of Real Estate including, without limitation, first position Commercial Loan Liens and, as a result, the Investments would be under-secured and/or effectively unsecured.

6. KP and MP directly or indirectly controlled PE within the meaning of A.R.S. § 44-1999, and KP and MP are each jointly and severally liable with, and to the same extent as PE for its violations of the anti-fraud provisions of the Securities Act, A.R.S. § 44-1991.

7. KP and MP acted for the benefit of their marital community and, pursuant to A.R.S. §§ 25-214 and 25-215, this Order of restitution and administrative penalties is a debt of KP and MP's marital community.

III.

ORDER

THEREFORE, on the basis of the Findings of Fact, Conclusions of Law, and Respondents' consent to the entry of this Order, attached and incorporated by reference, the Commission finds that the following relief is appropriate, in the public interest, and necessary for the protection of investors:

IT IS ORDERED, pursuant to A.R.S. § 44-2032, that Respondents, and any of Respondents' agents, employees, successors and assigns, permanently cease and desist from violating the Securities Act.

IT IS FURTHER ORDERED that Respondents comply with the attached Consent to Entry of Order.

IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032 that Respondents, and the marital community of KP and MP, shall jointly and severally pay restitution to the Commission in

1 the principal amount of \$19,851,868. The restitution obligation owed by KP, MP, and the KP and
2 MP marital community under this Order will be paid in full upon the earlier of: (a) payment(s) by
3 KP, MP, and the KP and MP marital community totaling \$19,851,868 plus interest; or (b)
4 payment(s) by any Respondent(s) totaling \$19,851,868 plus interest. The Trust's restitution
5 obligation under this Order will be paid in full upon the earlier of: (a) payment(s) by the Trust
6 totaling \$14,316,254 plus interest; or (b) payment(s) by any Respondent(s) totaling \$19,851,868
7 plus interest. PE's restitution obligation under this Order will be paid in full upon the earlier of: (a)
8 payment(s) by PE totaling \$1,336,182 plus interest; or (b) payment(s) by any Respondent(s)
9 totaling \$19,851,868 plus interest. Payment is due in full on the date of this Order. Payment shall
10 be made to the "State of Arizona" to be placed in an interest-bearing account controlled by the
11 Commission. Any principal amount outstanding shall accrue interest at the rate of 10 percent per
12 annum from the date of this Order until paid in full.

13 The Commission, in its sole discretion, may credit the amount of restitution owed by
14 Respondents with the value of any restitution payments made by them to the Investment investors.
15 Respondents shall provide to the Commission all information and documentation to verify that such
16 restitution has been paid which the Commission, in its sole discretion, may accept or reject.

17 The Commission shall disburse the funds on a pro-rata basis to investors shown on the
18 records of the Commission. Any restitution funds that the Commission cannot disburse because an
19 investor refuses to accept such payment, or any restitution funds that cannot be disbursed to an
20 investor because the investor is deceased and the Commission cannot reasonably identify and
21 locate the deceased investor's spouse or natural children surviving at the time of the distribution,
22 shall be disbursed on a pro-rata basis to the remaining investors shown on the records of the
23 Commission. Any funds that the Commission determines it is unable to or cannot feasibly disburse
24 shall be transferred to the general fund of the state of Arizona.

25 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that Respondents and the KP
26 and MP marital community shall jointly and severally pay an administrative penalty in the amount

1 of \$250,000. Payment is due in full on the date of this Order. Payment shall be made to the "State
2 of Arizona." Any amount outstanding shall accrue interest as allowed by law.

3 IT IS FURTHER ORDERED that payments received by the state of Arizona shall first be
4 applied to the restitution obligation. Upon payment in full of the restitution obligation, payments
5 shall be applied to the penalty obligation.

6 For purposes of this Order, a bankruptcy filing by any of the Respondents shall be an act of
7 default.³ If any Respondent does not comply with this Order, any outstanding balance may be
8 deemed in default and shall be immediately due and payable.

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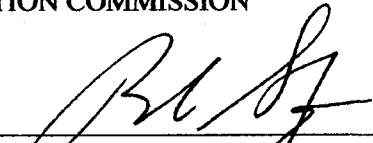
25 ³ The Commission acknowledges that KP and MP individually, and PE have filed and are participating in
26 pending, consolidated bankruptcies as noted in "Finding of Fact" paragraphs twenty-nine through thirty-one
above. Any subsequent or future bankruptcy petitions filed by Respondents following a discharge or
dismissal of the above referenced pending bankruptcy proceedings shall be viewed as a default.

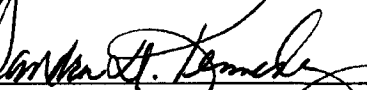
1 IT IS FURTHER ORDERED, that if any Respondent fails to comply with this order, the
2 Commission may bring further legal proceedings against that Respondent, including application to
3 the superior court for an order of contempt.

4 IT IS FURTHER ORDERED that this Order shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

6
7 
8 CHAIRMAN


COMMISSIONER

9 
10 COMMISSIONER


COMMISSIONER


COMMISSIONER

11
12 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
13 Executive Director of the Arizona Corporation Commission,
14 have hereunto set my hand and caused the official seal of the
15 Commission to be affixed at the Capitol, in the City of
16 Phoenix, this 21st day of MARCH, 2011.

17 
18 ERNEST G. JOHNSON
19 EXECUTIVE DIRECTOR

20
21
22 DISSENT

23
24
25 DISSENT

26 This document is available in alternative formats by contacting Shaylin A. Bernal, ADA
Coordinator, voice phone number 602-542-3931, e-mail sabernal@azcc.gov.

(MD)